Chapter VI

Judicial Responses on the Issues of Honour Killing In India

6.1 Introduction

In previous chapter researcher discussed that, there are a number of young couples or young girls and boys are killed in the name of customary practices of honour killing. As per customary practices women or girls are the repository of her families, community honour. Therefore in order to protect the honour of the family the relatives use to kill dishonoured persons under the defence of culture. Mostly women or girls become victims of the honour killing crime. Every year thousands of women are killed in the name of honour killing for preserving and protecting the family honour. Researcher also discussed that, in modern era though there are number of national and international legislation available, even then under the name of customary practices frequently honour killing incidents took place in the society. Researcher discussed that, what are the international instruments to curb the honour killing at the national and international level. As well as pointed that there are national levels commissions for women to protect them from barbaric and brutal violence. It seems that, there is no any specific legislation to eradicate or control the honour killing crimes in India. Therefore, it is prime need of stringent law against the honour killing practice.

India has a written Constitution and codified laws. Its judiciary is of the highest integrity. The Supreme Court of India is a shining symbol of the great faith in our judiciary and to our great pride. The Supreme Court has earned high praise all over the world. Several learned judges
have worked to uphold and to nurture this sacred national trust. The Indian Legislature and Judiciary make constant efforts to bring about improvements in courts and dispense justice to the victims.

In this chapter the researcher tries to discuss the role of the judiciary in relation to honour killing crimes and right to life with human dignity. There are various judicial decisions given by the High Courts and the Supreme Court of India relating to honour killing crimes. In present democracy like India it is a shame that we have no legal safeguard to address honour killing crime that has steadily increased over the last few decades. The Indian judiciary plays an important role to protect the rights of individuals by way of its various decisions and directions. Judiciary has the significant function of enforcing the Fundamental rights of the people granted to them by the Constitution.

Justice Untwalia has compared the Judiciary to “a watching tower above all the big structures of the other limbs of the state” from which it keeps a watch like a sentinel on the functions of the other limbs of the state as to whether they are working in accordance with the law and the Constitution, the Constitution being supreme.”¹ The researcher also discussed to assess the worth of judicial process in preventing violence of honour related crimes.

It is observed that, the judicial decisions do have a tremendous impact on the formulation and implementation of national policies. India has a unified judicial system with the Supreme Court standing at the apex and the High Court’s below it. The Supreme Court thus enjoys the topmost position in the judicial hierarchy of the country. It is the supreme interpreter of the Constitution and the guardian of the people Fundamental

¹. *India v. Sankalchand Himatlal Sheth, AIR 1977 SC 2328*
Rights. It is the ultimate court of appeal in all civil and criminal matters and the final interpreter of the law of land, and thus helps in maintaining uniformity of law throughout the country.

Judiciary in every country has an obligation and a Constitutional role to protect Human Rights of citizens. As per the mandate of the Constitution of India, this function is assigned to the superior judiciary namely the Supreme Court of India and High courts. The Supreme Court of India is perhaps one of the most active courts when it comes into the matter of protection of Human Rights. It has great reputation of independence and credibility. India has a unified judicial system with the Supreme Court (S.C) standing at the apex and the High Court’s below it. The S. C thus enjoys the top-most position in the judicial hierarchy of the country. It is the supreme interpreter of the Constitution and the guardian of the people’s Fundamental Rights. It is the ultimate court of appeal in all civil and criminal matters and the final interpreter of the law of land, and thus helps in maintaining a uniformity of law throughout the country.

It is observed that, in our country, the Indian judiciary has large enjoyed immense public confidence because justice performed their duties without fear and favour. The people have always considered the judiciary as the ultimate guardian of their rights and liberties. The judiciary is an important branch of the state and played vital activist role to implementing and enforcing the new ideas and principles through their judgment. While the administration of justice is a task entrusted to the judiciary, its credibility lies in the faith of the people. Independent and impartial judiciary is the very backbone of democracy. The Indian judiciary is held tradition in all the developing as well as the under

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3. S. P. Gupta v. UOI, AIR 1982 SC 149, Para 874
developing countries. Social justice required for the protection of individual rights. Justice is the correct and appropriate application of laws as opposed to arbitrariness and social justice concerned obligations of individual to community and its end is the common good.

6.2 Significance of Judiciary in Indian Society

The judiciary is the third branch of Government along with the Legislature and the Executive. The term Judiciary is used to designate those officers of Government whose function is to apply the existing laws to individual cases by keeping in view slandered of fairness and reasonableness while applying the laws to individual cases. Judiciary is the main pillar of the democracy. It is the rule adjudication agency of political system and one of the most essential branches of Government. Judiciary is the guardian of the rights of the persons protecting these rights from traditional and customary violence. Every person looks to the judiciary to protect his rights. Judiciary plays important role in protecting the rights and liabilities of the people, setting disputes, interpreting the laws and protecting the constitutional rights.

It is observed that, Indian judiciary is silence in case of honour killing crime; in present democracy like India it is a shame that we have no legal safe guard to address honour killing crime that has steadily increased over the last few decades. Official duty of the courts is to maintain rules of law in the country and to assure that the Government runs according to law in a country with a written constitution courts have the additional function of safeguarding the supremacy of the constitution by interpreting and applying the provisions and keeping all authorities within the constitutional frame work.
Researcher has also observed that judiciary has the significant role for protecting and enforcing the fundamental rights of the victims which guaranteed by Indian Constitution. In order to maintain the supremacy of the Constitution there must be an independent and impartial authority to decide matters between the parties. It is great wing of India to provide freedom and liberty of the Indian citizens as well as to control the traditional and customary violence within the country. The Indian Supreme Court and High Court judgements on crime of honour have done marvellous in restricting and preventing for the commission of crime.

Judiciary consists of Supreme Court which is the highest court of India. H. C which is subordinate court of Supreme Court the District Court and Session Court subordinate court of H. C and other subordinate courts.

6.3 Function of Indian Judiciary

The prime function of judiciary throughout the world is to help keep peace through their judgements, which is great safety value because it prevents criminal violence. The basic function of judiciary is to explain the existing laws and apply it to the appropriate cases. Judges should provide justice with utmost legal eminence impartial outlook and rational attitude. There are no any specific laws available to curb honour killing, by using existing laws to the appropriate cases of honour killing in several cases judges provides fair and impartial justice to the victim and tries to overcome problems of inter-caste marriages.


The role of the judiciary is that to render the justice those who suffered in justice from the state or private person. Judiciary is the tool in the hands of the state to punish the offenders and render the justice, in punishing the offenders and deciding the cases. The apex court those who found guilty in the harassment, threats, commits murder in the name of honour and violence against young men and women the judiciary punishes them.

In case of *Maya Kaur Singh v. State of Maharashtra* in an honour killing case, the Supreme Court upheld the life imprisonment awarded by the High Court to five persons including two women.

Indian Constitution provides guarantee of fundamental rights to the individual. Simple declaration of these rights is useless unless they are protected by somebody i.e. the judiciary. It protects and preserves the liabilities of the individual. It acts as guardian of the citizens. It works as a watchdog of citizen’s freedom and other rights. It is my view that the judiciary has attempted to venture in to the critical role of a social reformer by upholding the rights of the men and women. It continues to play a progressive, dynamic, creative and protective role for social, economic and cultural transformation. The Constitutional rights including right to live with human dignity are protected by the judiciary by passing several decisions.

For example Article 21 contains provisions for protection of the life and personal liberties of persons. In case of *State of Maharashtra v. madhkar Naryan Mandikar*\(^6\) it was held that a woman of easy virtue is entitled to right to privacy and no one can invade her privacy. This article

\(^6\) *AIR 1991 SC 207*
21 has also been invoked for the upliftment and maintains dignified life of the citizens.

Judiciary sometimes invents new laws through its power of interpretation. When laws are ambiguous the court decides what the law is and which of them shall prevail. Sometimes guides states and society. Thus judiciary set precedents which are followed in same case. Thus it acts as law maker. It has also played an important role to help in framing the laws for the welfare of the society.

For example in Vishakha v. state of Rajasthan\(^7\) the Supreme Court held that sexual harassment of work place of employment amounts to violation of rights of gender equality and right to life and liberty which enshrined in Article 14, 15,and 21 of Indian Constitution. The court further observed that the meaning and content fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facts of gender equality including prevention of sexual harassment or abuse. The judiciary laying down these guidelines for public and private employers in order to curb the sexual harassment is well acknowledged. The fact that these guidelines have been in operation for 15 years and only in 2012 the Sexual Harassment of Women at Work Place (Prevention, prohibition and redressal) Act 2012 was enacted which pointes to dynamic role of courts in enforcing equal opportunities to women

The judiciary acts as custodian of constitution and duty to protect the constitutional provisions. It plays vital role as safeguard of constitution. It also has power to declare the laws of the legislature

\(^7\) AIR,1997 SC 3011, 1997
Shri. Bodhisattwa Gautam v. Subhra Chakraborty

Article 21 of Indian Constitution also includes the right to live with human dignity and rape violates this right of women. Article 21 has to read together with Article 51-A Clause (e) of Indian Constitution as added by the Forty-Second Amendment and imposes a duty on Indian citizen ‘to renounce practices derogatory to the dignity of women’ The duties under Article 51 are obligatory on citizens but it should be invoked by the court while deciding cases and also should be observed by the state while making statute and executing laws

6.4 Writ Jurisdiction

Apart from the preamble of constitution incorporates justice as a constitutional goal. The Constitution of India confers a writ jurisdiction only to High Courts and S. C under Article 226 and 32 respectively to protect the rights of people including fundamental rights. At the same time, these articles confer the right on the part of people to approach directly to the High Courts and the Supreme Court for judicial rectification, redressal of grievances and enforcement of Fundamental Rights. In such a case the courts are empowered to issue appropriate directions, orders or writs including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-warranto, and Certiorari to protect the rights of people. By virtue of Article 32, the Supreme Court of India has expanded the ambit of Judicial Review to include review of all those state measures, which either violate the Fundamental Rights or violation of the Basic Structure of the Constitution.

There is express provision under Indian Constitution to confer the power on the High Courts and Supreme Court to declare a law unconstitutional if it is inconsistent with any of the provisions of part III

\(^{8} AIR 1996, CS 922\)
of the Constitution, and this is nothing but the power of judicial review. Hence the power of Judicial Review exercised by the Supreme Court is intended to keep every organ of the state within its limits laid down by the Constitution and the laws. It is in exercise of the power of Judicial Review that, the Supreme Court has developed the strategy of Public Interest litigation. The right to move to the Supreme Court to enforce Fundamental Rights is itself a Fundamental Right under Article 32 of the Constitution of India. This remedial Fundamental Right has been described as “the Cornerstone of the Democratic Edifice” as the protector and guarantor of the Fundamental Rights. It has been described as an integral part of the Basic Structure of the Constitution. Whenever, the legislative or the executive decision result in a breach of Fundamental Right, the jurisdiction of the Supreme Court can be invoked. Hence the validity of a law can be challenged under Article 32 if it involves a question of enforcement of any Fundamental Rights.

Dr. Babasaheb Ambedkar expressed his views to mention the importance of Article 32 of Indian Constitution on the floor of parliament, “If I was asked to name any particular Article in this Constitution as the most important – an Article without which this Constitution would be a nullity – I could not refer to any other Article except this one ……….. It is the very soul of the Constitution and the very heart of it.” It is true that a declaration of fundamental right is meaningless unless there is effective machinery for the enforcement of the rights. It is remedy which makes the right real. If there is no remedy there is no remedy at all.

The Right to Constitutional remedy under Article 32 can be suspended as provided under Articles 32(4), 358 and 359 during the period of promulgation emergency. Accordingly, in case of violation of

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9. See Article 13 of Indian Constitution.
Fundamental Rights, the petitioner under Article 32 for enforcement of such right cannot be moved during the period of emergency. However, as soon as the order ceases to be operative, the infringement of rights made either by the legislative enactment or by executive action can be challenged by a citizen in a court of law and the same may have to be tried on merits, on the basis that the rights alleged to have been infringed were in operation even during the pendency of the presidential proclamation of emergency. If, at the expiration of the presidential order, the parliament passes any legislation to protect the executive action taken during the pendency of the presidential order and afford indemnity to the execution in that behalf, the validity and effect of such legislation may have to be carefully scrutinized.

Under Article 226 of the Constitution of India, the High Courts have concurrent jurisdiction with the Supreme Court in the matter granting relief in cases of violation of the Fundamental Rights, though the High Court’s exercise jurisdiction in case of any other rights also. Hence the High Court has wider jurisdiction than the Supreme Court. The Supreme Court observed that where the High Court dismissed a writ petition under Article 226 after hearing the matter on merits, a subsequent petition in the Supreme Court under Article 32 on the same facts and for the same relief filed by the same parties will be barred by the ‘rule of res judicata’. The binding character of the judgment of the court of competent jurisdiction is in essence, a part of the rule of law on which, the administration of justice is founded11. Thus the judgment of the High Court under Article 226 passed after hearing the parties on merits must bind the parties till set aside in the appeal as provided by the Constitution and cannot be permitted to be avoided by a petition under Article 32.

Article 226 contemplates that notwithstanding anything in Article 32, every High Court shall have power, throughout the territorial limits in relation to which it exercises jurisdiction to issue to any person or authority including the appropriate cases, any government, within those territories, direction, orders or writs in the nature of *Habeas Corpus, Mandamus, Prohibition, Quo-warranto* and *Certiorari* or any of them for the enforcement of Fundamental Rights conferred by part-III and for “any other purpose”. Hence, the jurisdiction of a High Court is not limited to the protection of the Fundamental Rights but also of the other legal rights as is clear from the words “any other purpose”. The concurrent jurisdiction conferred on High Courts under Article 226 does not imply that a person who alleges the violation of Fundamental Rights must first approach the High Court, and he can approach the Supreme Court directly\(^\text{12}\). But in *P.N. Kumar v. Municipal Corporation of Delhi*\(^\text{13}\) the Supreme Court expressed the view that a citizen should first go to the High Court and if not satisfied, he should approach the Supreme Court. Innumerable instances of Human Rights violation were brought before the Supreme Court as well as the High Courts. Supreme Court as the Apex Court devised new tools and innovative methods to give effective redressal. The Indian judiciary has playing the vital role in order to protecting state and upliftment of the nation.

6.5 Judicial Views on the Customary Practice of Honour Killing

There are several customary practices that existed in Indian society. It is said that, every religion possesses a bundle of customary practices which routinely followed since ancestral period. It is observed that, every

\(^{12}\) *Ramesh Thapper v. State of Madras, AIR 1950 SC 124*  
\(^{13}\) *AIR 1989 SC 1285*
religion or caste or community is still tied up by the rusted chains of the customary practices. Some of customary practices are in good in nature which for useful for the development of the society and some of the bad in nature due to that degrading the social status or honour as well as sustain the development of the nation, e.g. customary practice of dowry, Sati practice, child-marriages, infanticide, female feticide, sexual abuses, rape, Sexual- harassment, honour killing etc. It is prime most obligatory duty of state and central Government to frame rule and regulations to control or eradicate bad nature’s of customary practices from the society. The Supreme Court issues time to time suggest provides guidelines or sometimes issues notices to the state and Central government to take appropriate precaution to protections of the society or persons\textsuperscript{14} from such bad natures of customary practices.

It is observed that, honour killing is a brutal, bad and barbaric nature of customary practice. It is prevailing since ancient period in India. Judiciary always tries to control or eradicate honour killing practice through the judgements and decisions of the court. Therefore, on 21 June 2011, a bench of Justice \textit{R.M. Lodha and A.KPatnaik} issued notice to the centre and some states, the state of Punjab, Uttar Pradesh, West Bengal and Haryana for taking appropriate measures on the growing issue of honour killing on filing petition by the NGO \textquoteleft{Shakti Vahini}\textsuperscript{15}.

On issue of honour killing case of \textit{State of Uttar Pradesh v. Krishna Master and another}\textsuperscript{16} Supreme Court awarded life imprisonment to three person’s six family members were gunned down, but said accused deserved death sentence.

\textsuperscript{14} \textit{Visakaha v. State of Rajasthan} AIR 1997 SC, 3011.
\textsuperscript{15} \url{www.dnaindia.com/india/report}
\textsuperscript{16} \textit{State of Uttar Pradesh v. Krishna Master and another criminal appeal no 1180 of 2004, decided in 2010}
In another case of *Lata Singh v. State of U.P. and Others*\(^\text{17}\) where Justice *Ashok Bhan and Markande Katju* expressed views on honour killing issue that, over the several instances of harassment, threats and violence against young men and women who marry outside their caste and held that, Such acts or threats or harassment are wholly illegal and those who commit them must be severely punished”. Court also gives trace on that, Inter-caste marriages are in fact the national interest as they will result in destroying the caste system.

Further, more the bench of court said that, ‘once a person becomes a major he or she can marry whosoever he or she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religion marriage the maximum they can do is that they can cut off social relations with the son or daughter, but cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage’.

It is observed that, in order to control and eradication of honour killing evil practices, the bench of court directed to the administration and police authorities throughout the country see it, that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with woman or man is a major, the couple are not harassed by any one nor subjected to threats or acts of violence and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by la’. Moreover Court said that their nothing honourable in such killing and in fact they are nothing but barbaric and shameful acts of murder committed by brutal and feudal minded persons who deserve death sentence.

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It seems that judiciary is playing the most important role for the protection of persons from the evil customary practices. Aforesaid decisions are beneficial to the entire society, as well as nation. Judiciary not only provides justice to the society, but also provides that the protective umbrella to the human beings. The bench of the court has given a historical judgment in *Lata Singh* case\(^\text{18}\) that, caste system is a curse to the Indian society. The said judgement is first steps towards eradication of caste system and inspiring to do inter caste-marriages and inter-religious marriages in the society, it is also a step towards bringing Uniform Civil Code in India.

6.6 Honour Killing and Judicial Analysis

The judiciary has played a vital role in promotion and protection of social justice and individual rights b delivering land mark judgments over the decades. Some of the most unpleasant, customary violations of human rights like honour killing, dowry, child marriage etc. have been abolished wholly owing to widespread awareness and strictly implementation measures taken by the judiciary. It has also played an important role to help in framing the laws welfare for persons.

Researcher has observed that, for the eradication of social evil and customary practices, the Indian courts has taken good step to controlling honour killing crimes and to maintaining the dignity and humanity in the society, through awarding highest punishment i.e. death punishment to the convicted persons and whose who associated with the honour killing crime. Indian judiciary brings new revolutions in the society by applying their own idea and themes through their different judgement. Different

\(^{18}\). Ibid
cases they interpret the different laws for providing appropriate justice to the victims.

In the twenty first century under the impact of globalisation era the practice of murdering in the name of honour, it is shameful full to the Indian culture. The judiciary has taken bold steps through judicial activism to curb this social malaise. The barbaric practice of honour killing in case of Lata Singh v. State of Uttar Pradesh\(^{19}\)

Researcher has found recent changes in law and policy in India as a result of the judgements delivered by Hon’ble Courts. The different courts interpret the laws in different innovative ways represent their opinion regarding honour killing incidents. Some of these are as follow

Indian peoples basically strong follower of the customs and traditions. Some of the customs practices are oppressive in nature. Since Independence of India on paper everyone got freedom but as per my opinion even today Indian women are not getting freedom properly still she is bound with the customary and traditional rules and regulation. In some of state of Indian state murdering in the name of the custom practices, it is a direct violation Article 21 and Article 14 of Indian Constitution, which gives fundamental freedom to the citizens.

Part III of Indian Constitution contains a long list of fundamental rights. Article 21 of the Constitution guarantees the right to life and liberty to all persons irrespective they are citizens or non-citizens. Through number of landmark judgements Justice Krishna Iyer and other activist judges has drew that existing provisions

The Supreme Court and High Court has of India have played a significant role in protecting the fundamental rights of its citizen. Through

\(^{19}\) AIR 2006 SC 2522
the judicial activism our Indian judiciary successfully overcomes different problems in the country through their order and judgments. Our Court seems determined to curb the number of social evil practices. Since several instances are coming to our knowledge of harassment, threats and violence against young men and women who marry outside their caste, it is necessary for judiciary to make some general comments on the matter. One of the most heinous and barbaric practice of honour killings, i.e. killing of young women by their family members or their relatives or caste or community members feeling that such acts are bringing dishonour to the family or caste or community by marrying or wanting to marry a man of another caste, community or whom the family disapproves of is frequently reported to take place in India. The researcher has observed that, the various Courts have expressed a deep concern in various cases.

6. 6.1 Caste System is The Curse to the Nation

The bench of Justice Markandey Katju and Justice Gayan Sudha Mishra has rightly passed judgment against the killing in the name of custom is against the law. Recently honour killing is a burning issue across the country. In India every society and individuals are strong believer of caste system.

In Arumugam Servaiv. State of Tamil Nadu \[20\] the bench stated that, the caste system is a curse on the nation and sooner it is destroyed the better. In fact it is dividing the nation at a time when we have to be united to the face the challenges before the nation untidily. Hence inter caste marriages are in fact in the national interest as they will result in destroying the caste system. However disturbing news coming from

\[20\]. \( (2011) 6 \) SCC 405 (AIR 2011 SC 1859)
several parts of the country that young men and women who undergo inter caste marriage, are threatened with violence or violence is actually committed on them. In our opinion such acts of violence or threats or harassment are wholly illegally and those who commit them must severely be punished.

Furthermore the Hon’ble judges directed that if the parents of the boy and girl do not approve of inter caste or inter religious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot gives any type of threats or instigate or commits acts of violence and harass the person who undergoes such inter caste marriage or inter religions marriage.

In this case the bench of Supreme Court has directed to the administration or police authorities throughout the country to see to it that if any boy or girl who is a major undergoes inter caste or inter religious marriage with a woman of man who is a major, the couple are not to be harassed by any one nor subjected to threats or acts of violence and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation is taken to task by instituting criminal proceeding by the police against such persons and further action be taken against such persons as per the provision of law.

In the same case Hon’ble bench issued special direction given to the administrative and police officials to take strong measures to prevent such atrocities i.e. honour killing acts. If any such incident happen apart from instituting criminal proceedings against those responsible such atrocities the state Government is directed to immediately suspend the District Magistrate or collector and SSP/SPs of the district as well as other officials concerned and charge sheet them and proceeding against
them departmentally if they do not prevent the incident (honour killing) if it has not already occurred but they have knowledge of it in advance or if it has occurred they do not promptly apprehended the culprits and others involved and institution criminal proceedings against them it will be deemed to be directly or indirectly accountable for crime.

The Supreme Court also stated that in number of state KhapPanchayat (non-judicial authorities) which often pass order or instigate to honour killings or atrocities against the boys and girls of different castes and religious who wish to get marriages or have been married or interfere with the personal lives of people is totally illegal and feudal practice. Through this land mark judgement the Hon’ble Supreme Court has directed different authorities to eradicate the caste system from the country and protect the victims of honour related violence.

6.6.2 Disapproval to Harassment of People Who Love Each Other and Get Married

In case of Sujit Kumar and other v. State of Utter Pradesh and others\(^{21}\), the bench of Allahabad High Court elaborates in their judgement that judicial disapproval of honour killing or harassment of people who love each other and want to get marriage. In order to protecting honour of the family and norms of religion whoever commits harassment or violence or create any types of obstacle in the path of inter caste marriage before marriage or after marriage or at the time of marriage or in love each other and who want to get marriage inter caste or religious marriage. It is against the law and disapproval in the eye of the law.

\(^{21}\text{Sujit Kumar and other v. State of Utter Pradesh and others,2002 (456)ACC 79 at 81 :(2002 AIHC 4434 ) (All)}\)
6. 6.3 Police Protection Provided By the Judiciary

In number of cases judiciary has directed that to the couples those who were major and faced threats or violence of atrocity from their family member or their close relatives or any non-authorised bodies in order to protect the right of human being judiciary has provided police protection. For example in case of GeetaSabharwal v. State of Haryana and Jivabhai v. State of Gujarat in these cases the Hon’ble court directed to the administration and police authorities thought out the country will see to it that if any boy or girl who is a major undergoes inter caste marriage or inter religious marriage with woman or man who is a major, the couple are not harassed by any one nor subjected to threats or facts of violence and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation is taken to task by instituting criminal proceedings by the police against such person and further stern action is taken against such person as provided by law.

Similarly in Ashok Kumar v. State the High Court of Punjab and Haryana stated that, couples performing love marriage are chased by police and relatives accompanied by musclemen. Often cases of rape and abduction are registered the boy at that times the couple faces the threat of being killed and such killing is termed as honour killing. In several times the state has not taking any type of precaution about such killing. In number of cases the judiciary has directed to the state to evolve compassionate mechanism speedily to redress grievance of young couples and their parents. In order to eliminate such types of crimes or to

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preventing from any grave type of incident the court always directed to the administration authorities or police authorities to provide protections to the victims.

6. 6.4 Right to Marry

As per Article 21 Constitution of India provides guarantees to every person, his right to life and personal liberty in express term. It says that no one person shall be deprived life or personal liberty except according to procedure established by law. But under the name of customary practices the family member or their relatives and caste panchayat member deprived the complete life of persons. Those who want to inter caste or inter religious-marriage against the wishes of their parents it will be treated as dishonour of the family. Liberty of marriage has been withdrawn by the religious people.

In Allgever v.Louisana\textsuperscript{24}, the Supreme Court held that Life includes all personal rights and their enjoyment embracing the use and enjoyment of facilities acquiring useful knowledge, right to marry; Article 21 prevents the state from treating human life as that of any animal

In the recent past Supreme Court came across a number of cases involving honour killings and it has in strongest possible words condemned the barbaric acts of the and KhapPanchayat family members of the victim.

JusticeMarkandeKatju has observed in the case of Lata Singh v. State of Uttar Pradesh\textsuperscript{25}, that this case reveals a shocking state of affairs. “There is no dispute that the petitioner is a major and was at all relevant times a major. Hence she is free to marry anyone he likes or live with any

\textsuperscript{24} Allgever v.Louisana(1897) 165, U S 578
\textsuperscript{25}.AIR 2006 SC 2522
one she likes. There is no bar to an inter caste marriage under the Hindu Marriage Act or any other law. Since several such instances are coming to our knowledge of harassments, threats and violence against young men and women who marry outside their caste. Inter caste and inter religious marriages are in national interest as they will result in destroying the nation united. However, disturbing news is coming from several parts of the country that young men and women who undergo inter caste or inter religious marriage are threatened with violence, or violence is actually committed on them. In our opinion such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. Hon’ble Court also strongly condemned that honour killing of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killing and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserve harass punishment. Only in this way we can stamp out such acts of barbarism’.

In another case Supreme Court strongly expressed disapproval the practice of Khap Panchayat taking law in to their own hands and indulging in offensive activities which endanger the personal lives of the persons marrying according to their choice.

Shiv Kumar Gupta Alias Raju v. State of U.P. and Others

In this case the court Rani Gupta move the court calming her father was forcing her to marry a boy she dislike. Of her own free will she entered in to marriage with a person of her choice. The court accepted that she was a major and court given opportunity of making her statement to the court on

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her choice. Furthermore the court stated that, no one has right to interfere in the personal life and liberty.

6. 6. 5 Suppressed the Evil Customary Practices by the State

In number of cases the Indian Supreme Court and High Court directed to the state to eliminate crimes and suppressed the evil practices e.g. Dowry, sati, Honour killing etc. *G. Krishanan s/o Govindan v. Union of India*, in this case Hon’ble justice *Karkandey Katjua*, observed that, In fact even today the upper caste and OBC often look down and insult the member of Scheduled Castes and Scheduled Tribes. This can no go longer be tolerate in this modern age of democracy. In modern age equality is basic features which characterise this era. Today no man or community will tolerate to be treated as inferior and oppose such ill-treatment and be justified in doing so. The truth is that, even today in many parts our country Scheduled Caste and Scheduled Tribes are oppressed and humiliated and violence and there is fallen prey of this. In many parts in the Western part of the district of Utter Pradesh if the scheduled caste boy falls in love and marries or want to marry a non-scheduled caste girl, it often happen that both are murdered by the members of non-scheduled caste community or the family members of the girl and it becomes a honour killing. In fact there is nothing honourable in this and this is an abominable, disgraceful and shocking practice which must be suppressed by the state.

6. 6.6 No Jurisdiction of Khap Panchyata

It is observed that, the Indian judiciary has been persistently challenging the jurisdiction and legality of such community groups like *Khap Panchayat* where the criminal activities are a common practice.

The Supreme Court of India in case of *Smt. Laxmi Kachawahav. The State of Rajasthan*\(^{29}\) observed that, 'Khap Panchayat do not have jurisdiction ‘to pass social boycott order or impose fine on them because it violates the basic rights of an individual. It is also observed that, it is always a contravention to the rights conferred vide part III of the Indian Constitution.

The Supreme Court bench of Justice I. D. Palekar, rightly stated in the case of *Jagmohan Singh v. State of Uttar Pradesh*\(^{30}\), Article 21 of the Constitution confers on every citizen the fundamental right to life and personal liberty. No one has right to directly interfere with a person’s life or liberty unless there is a procedure established by law. But it is clear that deprivation of life is constitutionally permissible if that is done according to procedure established by law. While in case of honour killing the relatives of victims used to kill in the name of customary practices, it seems that without due process of law it is clear violations of Article 14 and 21 of Indian Constitutional Law. Thus the families taking the law in to their hands, there is clear departure from the provisions enriched in the constitution.

In several cases that, husband killed his wife in the name of his reputation or family honour it will treated as exemption from the capital punishment. It will provide scope and indirectly support to preserve the customary evil practices like honour killing, for example in case of *Mangala Canda v. Emperer*\(^{31}\), committing adultery of a married women without obtaining the consent of her husband, it is treated as shameful and dishonour of the family. As per Indian Penal Code of general defence, it was well accepted norm that a husband could benefit from the exception

\(^{29}\) AIR 1999 Raj 254
\(^{30}\) 1973 1 SSC 20
\(^{31}\) AIR, 1925, Nagpur, 37 (pre-partition case)
of grave and sudden provocation plea if he killed his wife or her alleged lover on account of proof of adultery.

Madras H. C. clearly shows in *Potharaju v. Emperer*\(^{32}\) appeal case, that one cannot supply consideration of social morality to a purely physiological problem. The question is not that the appellant ought to have exercised control but whether he lost control over himself. When a man sees a women be she his wife or his mistress in the arms of another man, he does not stop to consider whether he has nor has not the right to insist on exclusive possession of her person as the case cited by the judge puts it. She is a woman, of whose person he desires to be in exclusive possession and that is for the moment, enough for him, he thinks nothing else. It seems that committing adultery is a dishonour of the husband and under the losing concentration commits even he killed his adulterous wife, court gives benefit to him on ground sudden and grave provocation.

*Emperer v. JateUraon*\(^{33}\), it was latter positions that become established judicial practice with the courts granting reduced sentences on the grounds of a broad interpretation of grave and sudden provocation plea.

### 6. 6.7 The Principle of ‘Rarest Of Rare Cases’

Honour killing is an evil and brutal customary practice which is prevailing in the some state of the country. Basically it is a customary practice that whoever violates the social norms of the family or community and brought dishonour to the family or community resulting to cause death.

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\(^{32}\) AIR, 1932 Madras, 25 (1)

\(^{33}\) AIR, 1940, Patna, 541
In *Maya Kaur Baldev Singh v. State of Maharashtra*\(^{34}\) In this case honour killing involving a *Jat Sikh* family in Maharashtra, the Supreme Court upheld the life imprisonment awarded by the High Court to five persons, including two women. A Bench comprising *Justice S.B. Sinha and Harjit Singh Bedi*, while upholding the sentence, held that the case fell within the category of the rarest of rare cases. The Bench however, ruled that it was not inclined to re-impose the death penalty.

### 6.6.8 Same Gotra Marriage Is Legal

As per the rule and regulations of the *Khap Panchayat* and social norms of customary practices, performing marriages within the same *gota* is strictly prohibited. Indian judiciary given green signal for performing marriages within the same *gota* is valid marriage. In the case of *Madhavarao v. Raghavendrarao*\(^{35}\) it was held that the marriage in question between a husband and wife belonging to the same *gota* was valid. Through this landmark judgement by the Bombay High Court where it declared that same *gota* marriages were legal.

### 6.7 Judicial Attitude towards Honour Killing

After a series of judgments where courts accepted a plea of ‘provocation’ in the context of men being in-charge of women and reasonable for guarding women and killing ‘trespassers’ the Lahore Court ultimately declared such murders not to be an offence at all and acquired an accused of murdering of two persons in the name of honour. The accused had killed his daughter and her partner in the sugar-cane field, after allegedly catching them in compromising position. Medical evidence showed semen traces on vaginal swabs taken from the

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\(^{34}\) Maya Kaur Baldev Singh v. State of Maharashtra, SC, Appeal no. 1364-66 of 2004

\(^{35}\) AIR, 1946 Bombay H.C. 377
woman. *Sardar Mohammad v. The State*\textsuperscript{36}, In this case, Court held that in such a situation, the appellant, being the father of, X one of the deceased, was overpower by the wave on his family honour, and killed both the deceased at the spot. In opinion he has committed no offence liable to punishment.

### 6.8 Criminal Jurisprudence of Honour Killing

The purpose of criminal justice system is to protect the rights of individuals and the state against the intentional invasion of criminals who violate the basic norms of society. It is observed that there is no any specific law to deal with honour killing crimes. If honour killing crime treats as a murder it falls under the category of under section 300 of the Indian Penal Code. Section 300 provides that, culpable homicide is murder, if the act by which caused is done with the intention of causing death or if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or if it is done with intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid the offence commits the offence of murder. It seems that the acts of killings are done for honour.

In honour killing crime the act is committed pre-planned and intentional, imminently dangerous and in all probability has the chances of causing death, so those who are involved in the act of honour killing capital punishment should be imposed on the offenders.

\textsuperscript{36} *Sardar Mohammad v. the State* 1997, MLD, 3045; Para 13, 3049
It is observed that in honour killing incidents also fall into under section 354 of the Indian Penal Code, the assault or criminal force to woman with intend to outrage her modesty. In order to protect the honour of the family or community the members knowingly use any means or articles or criminal force against violator of social customary regulations. Section 354 of Indian penal Code provides that, whoever assault or uses criminal force to any woman intending to outrage or knowingly it to be likely that he will thereby outrage her modesty shall be punishable with imprisonment not less than five years and not extend that seven years and shall be liable for fine or both.

Committing murder for choosing life partner, or refusing arranged marriage, or somebody having extra marital sexual relationship etc., which are unaccepted by the community or family or caste *panchayat*, on point of view all come under ambit of honour killing, the draft suggested that, all members of a body or group of caste or community ordering or abetting the commission of murder will be deemed guilty of having committed the murder and liable for the maximum capital punishment.

It is observed that, honour killing includes the abetment act, under section 108 of Indian Penal Code, provides that, a person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention of knowledge as that abettor, in honour killing crime a group of community or *khap* or family members are liable for act of abetment. Punishment of abetment act like honour crime or any other act, whoever abets any offence shall be liable for punishment.
It is observed that, for preserving honour of the family of community members instigate to commits suicide or under the prevailing law such motive and result in honour killing due to the suicide committed by lovers because of threats or fear or importunate stiff resistance from their families are the same as murder, i.e. abetment to commit suicide, and provides for a punishment of either description for a term which may extend to ten years, along with fine.

It is observed that, the existing criminal laws can be useful to control the honour killing crimes; due to lack of proper implementation these laws unable to control such types of crimes, resulting that, day by day increases honour killing incidents. The existing punishment can be control if honour killings are treated as murder Section 299 to 304 of Indian Penal Code, provides that, any person guilty of murder and culpable homicide not amounting to murder, he is liable for life imprisonment or death sentence and fine. Punishment for culpable homicide is life imprisonment or imprisonment for up to ten years and fine.

In honour killing act also observed that, in order to protect and restore the family members attempt to commit murder of victim person so, that under section 307 of Indian Penal code speak that, whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, and liable with imprisonment of either description for a term may extend to ten years and shall also be liable to fine

It is observed that in the incidents of honour killing, in order to restore the family honour or community honour, the family or community
members attempt to commit culpable homicide which explain under section 308 of Indian Penal Code, that whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be liable for three years imprisonment or with fine or with both and if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years or with both.

Honour killing incidents takes place with the help of criminal conspiracy which is offence under the section 120 A and 120 B of IPC, at the time of dishonour of family or community, the members of family or community members collectively decide to commit honour killing crime which is liable for punishment under criminal conspiracy act. Section 120A and B stated that, when two or more persons agree to do, or cause to be done, an illegal act or agreement to commit an offence shall amount criminal conspiracy. Whoever is party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards

Honour killing incidents also punishable under section 107 to 116 i.e of IPC, Whoever intentionally instigates any person to do illegal act or a person abets an offence, abets either the commission of an offence with the same intention shall be liable punishment as his act.

Family members, community member’s sometimes Khap Panchayat members collectively accountable for act of honour killing crime. They are also liable for punishment under section 34 and 35 of IPC. When a criminal act is done by more than one person in furtherance of the common intention of all, each of such persons is liable for that act in the
same manner as if it were done by him alone. Whenever an act, which is
criminal only by reason its being done with a criminal knowledge or
intention is done by several persons, each of such persons who joins in the
act with such knowledge or intention is liable for the act in the same
manner as if the act were done by him alone with that intention.38

6.9 Honour Killing Comes within the Category of ‘Rarest of
the Rare’

Honour killing is an evil and brutal customary practice which is
prevailing in the same state of the country. Basically it is a customary
practice that whoever violates the social norms of the family or
community and brought dishonour to the family or community resulting
to cause death. It is observed that, recently an honour crime cases has
been increase and in current scenario the state has remain mute therefore a
lot of fear created among the young generation and couples who are
married and some of them intending to get married. Honour killing is an
extreme brutal form of violence committed against the violators of the
code and norms of the family and community. In India every year more
than thousands of young people’s faces consequence of honour and loses
their lives for protection of honour and in the name of customary
killing.39 Under the heading of the Honour Killing (Customary killing) no.
of women and men’s are murdering across the country and it is increases
continuously. Honour killing practice is so severe form of crime in the
world, because own relatives collectively instigate and commit murder in
presence of family or community.

38. U/S 34 and 35 of Indian Penal Code, 1860
It is observed that, Honour killing crimes are the by-product of Patriarchal group norms and it is to a certain extent in conformity with the societal norms from which such atrocities practices virtually emanate. So, is the collective conscience of these societies hurt in such instances or should the society from a broader canvass be considered for the assessment. Indian judiciary impose capital sentence in issues related to honour killing by bringing it within the strict ambit of the “rarest of the rarest” principle.

Judiciary is declarations that, imperative to streamline the dialectic focus of the present debate. Extreme punishment i.e., capital punishment is to be imposed when the crime is committed in an extremely cruel, brutal, diabolic, revolting or dastardly manner. Honour killing acts inevitably arouse intense and extreme degradation of the society. The judicial pronouncement justifies the imposition of death penalty in cases of honour killing on the basis of a catena of socio legal implications. The murderer in cases of honour killings is a dominating position, or in a position where the victim is a helpless woman. So it is indeed affecting the collective concerns of the society.

It is observed that, in patriarchal society the birth of a girl taken as a social she is supposed to be inferior to the men. The harmful traditional and cultural customary evil practice such as honour killing violates human rights rules and regulations. The most pathetic aspect of disrespect for human rights includes various brutal practices such as; honour killing includes rape, forced marriage, torture, imprisonment within the home and even murder. However, honour killing is indeed highly degradable if the society is perceived form border perspective. InAbdusSadurKhan

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it was held that, honour killing shall not be
countenanced (moral support) in civil society. The apex court was also
opinion in case of Bhagwan Das v. State of (NCT) of Delhi\textsuperscript{42} that, person
who are planning to perorate honour killing should know that, the gallows
await them. The Indian judiciary have opted for such a harsh punishment
primarily to exterminate such barbaric and feudal practices which are a
slur on our nation.

Supreme Court observed, in the case of State of U.P. v. Krishna
Master\textsuperscript{43} wiping out almost the whole family on the flimsy ground of
saving the honour of the family would fall within the rarest of rare cases
evolved by this court.

In this context the Hon’ble court access the principle of ‘rarest of
the rare’ from the procedural frame work which is laid down in Criminal
Supreme Court was held that, life imprisonment is the rule and death
punishment is an exception under vide section 354 (3) of Criminal
Procedure Code, stated that, when the convection is for an offence
punishable with death or, in the alternative, with imprisonment for life or
imprisonment for term of years, the judgement shall state the reasons for
the sentence awarded, and in the case of sentence of death, the special
reasons for such sentence. Thus death penalty should not be given in
rarest of rare cases when alternative options are foreclosed without any
question.

It is observed that, the brutality of crime in every case would not
make the principle of ‘rarest of the rare’ case\textsuperscript{44}. Thus from the forgoing

\textsuperscript{41} AbdusSadur Khan v.Union of India, 176 (2011) DLT 630
\textsuperscript{42} AIR 2011 SC, 1863
\textsuperscript{43} AIR 2010 SC 3071
\textsuperscript{44} MahendraNath Das v. State of Assam AIR 1999 SC 1926
discussion and dictum laid down by the Supreme Court in the *Bachan Singh* case, it is evident that there is an element of conflict which persist at the substratum of the judicial principles.

The prohibition of cruel and unusual punishment must draw its meaning from evaluating standard of decency which marks the progress of maturing society. Thus punishment must not be violates the contemporary standards of decency, and it must accord with the dignity of man. At common law murder was subject to an automatic death sentence, subject of course sovereign prerogative of mercy. The extreme penalty can be inflected by only in gravest cases of extreme culpability and due regard must be made to the mitigating circumstances. In case of *Santosh Ram Bind v. State of Maharashtra* the Supreme Court left it entirely on the court to pass the sentence in accordance with the gravity and nature of the offence and it is in this perspective that the law is settled enough to record that it only in the ‘rarest of the rare’ principle case that the maximum penalty, namely, the death sentence ought to be imposed.

It is observed that, the Law Commission of India suggested an alternative framework to curb the social evil and also proposed that the acts of endangerment of liberty including social boycott, harassment etc. of the couple or their family members are treated as offences punishable with mandatory minimum sentence. The acts of criminal intimidation by members of unlawful assembly or others acting at their instance or otherwise also made punishable with minimum sentence under proposed legislation.

45. *AIR 2003 SC 269, 20*
46. The Prohibition of Unlawful assembly (Interference with the Freedom of Matrimonial Alliances) bill, 2011
6.10 Role of Judiciary and KhapPanchayat

The Supreme Court gives various directions to protect the rights of woman and to establish the rule of law by curtailing the powers and emergence of KhapPanchayat and Village Panchayat which are curse to humanity. The recurrence of such crimes has been taken note of the Court in variety of cases and seriously condemned such matter where the persons are tortured in the name of caste, gotra, religion and sometime such cases result into honour killing. The society divided on the basis of caste and religion which is harmful to unity and integrity of nation and also results into violation of human rights. In Lata Singh v. State of U.P. and Others\(^7\), the Court held that:

“The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation united. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news is coming from several parts of the country that young men and women, who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished”.

The Supreme Court pointed out that the KhapPanchayat are totally illegal as they kill the persons in the name of honour. The person has right to marry as per his/her own wish and will and there is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserve

\(^7\) (2006) 5 SCC 475
harsh punishment. In *Arumugam Servai v. State of Tamil Nadu*⁴⁸, the Court observed as under:

“We have in recent years heard of Khap Pancahayat (known as Katta Panchayats in Tamil Nadu) which often decree or encourage honour killings or other atrocities in an institutionalized way on boys and girls of different castes and religion, who wish to get married or have been married, or interfere with the personal lives of people. We are of the opinion that this is wholly illegal and has to be ruthlessly stamped out. As already stated in *Lata Singh case* (supra), there is nothing honourable in honour killing or other atrocities and, in fact, it is nothing but barbaric and shameful murder. Other atrocities in respect of personal lives of people committed by brutal, feudal-minded persons deserve harsh punishment. Only in this way can we stamp out such acts of barbarism and feudal mentality. Moreover, these acts take the law into their own hands, and amount to kangaroo courts, which are wholly illegal.”

Hence, the Supreme Court directs the administrative and police officials to take strong measures to prevent such atrocious acts. If any such incidents happen, apart from instituting criminal proceedings against those responsible for such atrocities, the State Government is directed to immediately suspend the District Magistrate/Collector and SSP/SPs of the district as well as other officials concerned and charge-sheet them and proceed against them departmentally if they do not (1) prevent the incident if it has not already occurred but they have knowledge of it in advance, or (2) if it has occurred, they do not promptly apprehend the culprits and others involved and institute criminal proceedings against them, as in our opinion they will be deemed to be directly or indirectly accountable in this connection.

⁴⁸ *(2011) 6 SCC 405*
The researcher thinks that it is essential to mention that the issue relating to the role of KhapPancahayat is pending before Supreme Court;\textsuperscript{49} where it will be expected that the Court will examine the role of KhapPancahayat and direct them not to act in extra judicial manner. Apart from this the competent Court takes the serious note of acts of KhapPancahayat and the person who involves in it and who prohibit and torture the people in the name of honour. The Court also directed to State Government to take strict action against such culprits and held responsible to those people who are directly or indirectly encourage such acts. The Court does not allow violating the rights of people in the name of honour which results into the violation of basic human rights.

Hence when we try to analyse the role of competent court to protect the rights of victim, we found that the Indian judiciary plays a great role to take care of every aspect of victim. Indian judiciary always try to fill the gap whenever there is any lacunae or when the law is inadequate or insufficient to protect the rights of victim. When we talk about the role of victim in Indian criminal justice system as we follow the model of adversarial criminal justice system and where, there is limited role for victim to raise his/her voice in the criminal justice system. The same thing noticed by Court and tries to involve him/her in the proceedings and tries to protect their interest. The Court specially Higher Courts gives several directions to involve the victim in the process of investigation, allow him/her to engage a lawyer of his/her own choice. The Court also gives direction to the State not to withdraw the matter without the knowledge of victim though the State has power to withdraw the case at any stage of the trial. The Court passes several judgments to protect the rights of victim and finally it compels the Government to appoint the

\textsuperscript{49}. Shakti Vahini v. Union of India and Others, W.P. (Criminal) No. 231 of 2010
Justice Malimath Committee to reform the criminal justice system and suggest the effective measures.

The important contribution of higher judiciary which we can’t ignore is that to evolve the compensatory jurisprudence to give compensation to victims of crime or dependents of victim. We can say that the evolution of compensatory jurisprudence is the classical example of judicial activism where the Court gives compensation for the violation of fundamental rights including the violation of basic human rights. In India, there is no separate law to give compensation to victims of crime and that is the reason the credit goes to higher judiciary to develop such law to pay compensation to different types of victim. The higher judiciary gives directions time to time that the Court should be liberally use the statutory provisions specially Section 357 (3) of Cr.P.C. while giving compensation to victims of crime or dependents of victim. The legislature finally takes the initiative to insert the compensation scheme through Criminal Procedure Code (Amendment) Act, 2008 to give compensation to victims or dependents of victim. The scheme is made applicable to the victims irrespective of the outcome of the prosecution. This is a welcome step on the part of Government to introduce such scheme, but at the same time it is equally important one that Central Government should provide funds for such scheme and develop co-ordination with State Governments to raise the funds to pay compensation to victims or dependents of victim. No doubt the failure or success of this scheme will depend upon in what way Government will implement this scheme to protect the interest of victims.
6.11 Step Taken By Central Government and Law Commission

It is observed that, there is no specific law to deal with honour killings, the murders under general categories of homicide or manslaughter, when mob of community or caste has carried out such attacks. In case of dishonour family or community, in order to restore the honour of the family or community they use to kill men and women. It is very difficult to trace out the evidence of such killings, because collection of evidence becomes very tricky and eye witnesses are never forthcoming. From the latest case of alleged honour killing of Abdul Hakim of Bulandshahr village in Uttat Pradesh, the Law Commission recommended making it non-bailable offence. The Commission has asked the Government to explore the possibility of a new law to prohibit unlawful assemblies like Khap which take decision to condemn marriages not prohibited by law.

After identifying serious problem of honour killing the Central Government had consisted a group of Minister on honour crimes, had earlier proposed making honour killings a separate offence under the Indian Penal Code to bring clarity to law enforcement agencies\(^{50}\). The report said that, ‘No person or any group shall assemble to condemn any marriage not prohibited by law, on the basis that it dishonoured the caste or community tradition or brought disrepute to all or any of the persons forming part of the assembly or the family or the people of the locality concerned\(^{51}\).’ Another proposal was to amend the Indian Evidence Act to put the burden of proof on the accused, which means KhapPancahayatand

\(^{50}\) Journal of Academy of Juridical studies, Half yearly Vol. 8 No 1 Feb 2013 ISSN 2278-456 p. 155

\(^{51}\) U/S 2 (1) of the Prohibition of Unlawful assembly (Interference with the Freedom of Matrimonial Alliances) bill, 2011
family members who perpetrated killings would have to prove their innocence.

It is observed that, the Commission, However, has rejected the Government’s suggestions of defining honour killing as a specific offence in the *Indian Penal Code* under section 300 stating that the existing provisions were sufficient. The new law proposed by the Commission has defined three separate offences, with a maximum jail term of seven years for those found guilty of criminality intimidating married couples.

Number of times The National Commission for Women’s demanded that the Special Marriage Act, 1954 be amended to provide for removal of the thirty days waiting period for registration a marriage

It is observed that, there is a huge demand for law made with objective to complete eradication of this social evil. Hence the Law Commission released a draft bill for combating honour crimes on 24th January 2011 entitled “*The Prohibition of Unlawful assembly (Interference with the Freedom of Matrimonial Alliances) Bill 2011*”. The bill however concerned with the unlawful assemblies of *KhapPanchayat* and suggests making honour killings non-bailable offence or intimidation of couples. The draft bill proposed the offence under the Act will be tried by Special Courts to be headed by a Session Judge or Additional Session Judge. The Law Commission calls protection of couples threatened by the *KhapPanchayat* or unlawful assemblies, with the Collector and District Magistrate empowered to do so.

It is also observed that, the Central Government has made it clear that and it is coming out with a new legislation, providing members of the

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Kharpuncahayat or the victim families, if their action results in the death of the person, punishable, with sentence of death or life imprisonment.

The Indian Government has proposed to bring a definition of honour killing and intend to add a clause to under section 300 of the Indian Penal Code ensure that individual issuing dikats (objection) against couples can be charged with murder and liable for capital punishment.

In case of any violation of proposed bill of The Prohibition of Unlawful assembly (Interference with the Freedom of Matrimonial Alliances) Bill will be liable up to three year imprisonment and fine up to thirty thousand\(^53\) and all offences under the proposed Bill will be considered as cognizable, Non-bailable and Non-compoundable and tried by Session Court. The Supreme Court takes suomotu cognizance of the cases\(^54\).

\(^53\) U/S 4 of the Prohibition of Unlawful assembly (Interference with the Freedom of Matrimonial Alliances) bill, 2011
\(^54\) Ibid, Sec. 10